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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/673,296.   | 09/29/2003  | Michael Mittelstein  | P03115              | 3208             |
| 23702   | 7590        | 04/18/2006           | EXAMINER            |                  |
| Bausch & Lomb Incorporated<br>One Bausch & Lomb Place<br>Rochester, NY 14604-2701 |             |                      | SAYOC, EMMANUEL     |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |

3746

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |  |                     |  |
|------------------------------|------------------------|--|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> |  | <b>Applicant(s)</b> |  |
|                              | 10/673,296             |  | MITTELSTEIN ET AL.  |  |
|                              | <b>Examiner</b>        |  | <b>Art Unit</b>     |  |
|                              | Emmanuel Sayoc         |  | 3746                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. This office action is in response to the amendments of 2/14/2006. In making the below rejections and/or objections the examiner has considered and addressed each of the applicants arguments. Claims 1-4 are pending and are under current consideration. Claims 1, 2, and 4 are amended.

#### ***Drawings***

2. The replacement sheets of drawings filed 2/14/2006 are accepted and the objections to the drawings are withdrawn.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Steppe et al. (U.S. 4,713,051).

Steppe et al. in Figure 1 teach a peristaltic pump capable of being used in ophthalmic surgery comprising a housing (23), a pump head (labeled in Figure 1, Figure 12, 82) having a plurality of rollers (labeled in Figure 1, Figure 12, 82) held within the housing (23), and a backing plate (32) attached to the housing (when engaging cassette 20) and for cooperation with the pump head (labeled in Figure 1, Figure 12, 82). The device also includes a surgical cartridge or cassette (20) including a length of resilient tubing (labeled in Figure 1, Figure 12, 62) connected to a collection bag (see label in Figure 1) and for connection to a surgical aspiration (see label in Figure 1) device via additional tubing (see two types of tubing in the cartridge 20), and a cartridge holder (26) drawer (cartridge housing 28, 36 constitutes a drawer fitting into 26) for holding the surgical cartridge (20). As the cartridge (20) is inserted into holder (26), the pump head translates towards and away from the backing plate (linearly towards and away relative to the housing cartridge 20 and plate 32, and rotatingly relative to the housing 23). The drawer cartridge (28, 36) is moveable from an open position (see Figure 1) to an operative position (Figure 12), wherein the pump head (82) moves relative to the housing (23 rotates in housing) such that after the drawer moves from the open position (Figure 1) to the operative position (Figure 12), the pump head is moved toward the backing plate (32), such that the rollers and the backing plate (32) cooperate to peristaltically pump aspirant through the length of tubing as the pump head (82) is rotated. In the open position, surgical tubing is easily inserted between the pump head (82) and the backing plate.

***Response to Arguments***

5. Applicant's arguments filed 2/14/2006 with respect to claims 1-4 have been fully considered but they are not persuasive.

With respect to the argument that the backing plate is not attached to the housing, the backing plate in the Steppe et al. cassette (20) is in fact attached to the housing in the normal closed and operating position.

With respect to the arguments related to the relative movements of the pump head with the housing and backing plate, the pump head (labeled in Figure 1, Figure 12, 82) moves in rotating motion relative to the housing (23), and since the cassette (20) moves in and out of holder (26), the pump head moves in a translation manner towards the backing plate as the cassette is inserted. In the general interpretation, the cassette (20) constitutes a drawer.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references are cited to further show the state of the art with respect to surgical pumping systems.

U.S. Pat. 4,735,558 to Kienholz et al., 5,676,530 to Nazarifar, 5,213,483 to Flaherty et al., 4,201,525 to Brown et al., 4,256,442 to Lamadrid, and 5,267,956 to Beuchat – teach various surgical pump systems and various tube and cartridge engagements.

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7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

**Contact Information**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emmanuel Sayoc whose telephone number is (571) 272 4832. The examiner can normally be reached on M-F 8-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy S. Thorpe can be reached on (571) 272-4444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Emmanuel Sayoc  
Examiner  
Art Unit 3746

ECS



TAE JUN KIM  
PRIMARY EXAMINER